IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

OP.No. 10864 of 2000(R)

PETITIONER:

SR.DIVISIONAL PERSONNEL OFFICER,
SOUTHERN RAILWAY, PALGHAT.

BY ADV. SRI.M.RAJENDRA KUMAR, ADDL.CGSC
SRI.ALEXANDER THOMAS, SC,RAILWAYS

RESPONDENTS:
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1. P.K.KALYANI,
C/O.GENERAL SECRETARY,
SOUTHERN RAILWAY LABOUR UNION,
EDAPPALLY NORTH, COCHIN - 24.

2. THE PRESIDING OFFICER,
LABOUR COURT (CENTRAL),
KOZHIKODE.

BY ADV. SRI.B.GOPAKUMAR
SMT.CHINCY GOPAKUMAR
GOVERNMENT PLEADER, SMT.M.R.SREELATHA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 06/11/2007, THE COURT ON 06/11/2007 DELIVERED THE FOLLOWING:

O.P. NO.10864/2000/R

ORDER ON C.M.P. NO.18000/2000 IN O.P. NO.10864/2000

DISMISSED.

6.11.07. S.SIRI JAGAN,
JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1: COPY OF SUMMONS/NOTICE DATED 6.2.96 FROM 2ND RESPONDENT.

EXT. P2: COPY OF PETITION DATED 2.5.97 FILED BY PETITIONER BEFORE 2ND RESPONDENT.

EXT. P3: COPY OF PETITION DATED 10.2.99 AND AFFIDAVIT, FILED BY PETITIONER BEFORE 2ND RESPONDENT.

/TRUE COPY/

P.A. TO JUDGE

JP

S.SIRI JAGAN, J.

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O.P. No. 10864 of 2000

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Dated this the 6th day of November, 2007

JUDGMENT

An unfortunate situation arises in this case. An award in favour of a lowly paid employee of the Railways in an industrial dispute has remained stayed for a long period of 7 years only on the question of representation of parties by advocates. The petitioner is the Senior Divisional Personnel Officer of Southern Railway, Palghat. He is aggrieved by the refusal on the part of the Central Government Labour Court, Kozhikode to permit the railways to be represented by its standing counsel in the ID. Several contentions have been raised in support of the OP. The petitioner would contend that in view of the Section 195 of the Railways Act the Railways is entitled to be represented by its standing counsel. Second is that as held by the Allahabad, High Court in **I.C.I. INDIA LTD and PRESIDING OFFICER, LABOURT COURT (IV) and another** reported in 1992 (64) FLR 968, Section 36(4) of the Industrial Disputes Act is

unconstitutional and illegal. Thirdly, the representative of the workman raised this objection only when the standing counsel stood up to cross examine the workman in the ID and therefore there is implied consent. According to the petitioner, the objection regarding representation by counsel should have been taken at the initial stage of the proceedings in the I.D., which has not been done in this case. In the above circumstances the petitioner seeks a direction to the second respondent-Labour Court to permit the petitioner to be represented by its standing counsel.

2. The learned counsel appearing for the 1st respondent stoutly opposes the prayer. According to him there was never any representation by the standing counsel in the ID until or after the chief examination of the workman in the ID was over. Therefore the workman never had an opportunity to object to the legal representation on behalf of the management before the standing counsel stood up for cross examining the workman. He would submit that the workman had objected to the representation by the standing counsel of the management at the

earliest possible occasion. He would further submit that Section 36(4) of the Industrial Disputes Act has been enacted with a specific purpose of having balanced representation on the side of the workman as well as the management. There is no question of arbitrariness or discrimination in the matter and therefore the question of the Section being unconstitutional does not come into the picture at all. He therefore submits that in so far as the standing counsel does not come within the purview of Section 36 (4) he cannot represent the management in this particular case.

3. I heard the rival contentions in this case. I find some difficulty for deciding this question in view of a peculiar situation arising in this case. The records of the labour court had been called for and has been perused by me. The order contained in the ID shows that on 8.4.97 after the WW1 was examined in chief, the counsel for the management wanted to cross examine the witness and the Union opposed to the legal representation on behalf of the management. The counsel was not permitted to cross examine the witness. I further find that the management had filed MP No.14/99 seeking permission to the standing counsel

to represent the Railway Administration. The order dated 20.1.2000 on the same reads as follows:

> *"Heard. Railway advocate is permitted to represent the railway administration. Petition allowed accordingly."*

However, in the order sheet proceedings dated 20.1.2000 reads as follows:

> *"MP No.14/99 allowed. Petitioner is directed to produce documents and file affidavit."*

There is an apparent conflict between the order in the MP and the order in the order sheet. In view of this apparent conflict I am not inclined to go into the merits of this case in this original petition. The ID was referred for adjudication more than 11 years ago. It is only in the interest of both parties that this matter be concluded finally and expeditiously. The matter should not be dragged further in the name of representation by counsel. The order in the MP shows that the counsel was permitted to appear for the railway administration. In the above circumstances, the original petition is disposed of directing the labour court to permit both sides to engage advocates of their choice. However, I make it clear that this shall not be treated as

a precedent for the proposition that the railway is entitled to be represented by standing counsel in the ID before Labour Courts and Tribunals. The legal issues raised are left open to be agitated in a more appropriate case. The second respondent Labour Court shall complete the proceedings in the ID and pass award within two months from the date of receipt of a copy of this judgment.

The original petition is disposed of as above.

Sd/-
S.SIRI JAGAN,
JUDGE

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